

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,
Plaintiff,

vs.

MARLAN BURKI,
Defendant.

CASE NO: **4:20MJ3169**

DETENTION ORDER

On the government's motion, the court held a detention hearing under the Bail Reform Act, 18 U.S.C. § 3142(f). The court concludes the defendant must be detained.

There is probable cause to believe the defendant produced child pornography, a felony under 18 U.S.C. §2251(a). As such, there is a rebuttable presumption that no condition or combination of conditions of release will reasonably assure the defendant's appearance at court proceedings and the safety of the community. The defendant has not rebutted this presumption.

Although a factual dispute exists regarding whether Defendant is the person depicted in FBI photographs of the crime, that dispute is not to be decided by the court on a motion for detention. The affidavit supporting the criminal complaint provides probable cause to support the defendant's arrest for the crimes charged, and the evidence presented at the detention hearing does not sufficiently rebut the presumption of detention. Based on the gravity of the crime and the weight of the evidence that a serious crime was committed against a minor, I find by clear and convincing evidence that the defendant's release would pose a risk of harm to the public.

I have evaluated possible conditions for Defendant's release, including conditions which restrict Defendant's travel, personal contacts, and possession of drugs, alcohol, and/or firearms; require reporting, education, employment, or treatment; monitor Defendant's movements or conduct; and/or provide for release to a third party custodian; in this case, Defendant's wife. After thoughtfully considering these options, the currently proposed or available conditions of release or any combination of these conditions (see 18 U.S.C. § 3142(c)), will not sufficiently ameliorate the risks posed if the defendant is released.

Directions Regarding Detention

The defendant is committed to the custody of the Attorney General or a designated representative for confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or held in custody pending appeal. The defendant must be afforded a reasonable opportunity to consult privately with defense counsel. On order of the United States Court or on request of an attorney for the Government, the person in charge of the corrections facility must deliver the defendant to the United States marshal for a court appearance.

October 13, 2020.

BY THE COURT:

s/ Cheryl R. Zwart
United States Magistrate Judge